



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 4, 2003

Mr. Leonard V. Schneider  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2003-3822

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182174.

The City of League City (the "city") received four requests from the same requestor for the police department's long distance phone records for March, April, May, and June of 2002. You state that you will release some information to the requestor. However, you claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>1</sup>

Initially, we note that the submitted telephone billing records are subject to section 552.022 of the Government Code, which provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

Gov't Code § 552.022(a)(3). You contend that portions of the information are excepted under section 552.108 as well as the common-law informer's privilege, as incorporated by section 552.101. The informer's privilege under *Roviaro v. United States*, 353 U.S. 53, 59 (1957), and section 552.108 exist to protect a governmental body's interest. Therefore, the informer's privilege under *Roviaro* and section 552.108 may be waived by a governmental body and are not other law that make information confidential under section 552.022. See Open Records Decision No. 549 at 6 (1990); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold submitted information under section 552.108 of the Government Code or the common-law informer's privilege.

However, the informer's privilege is also found in rule 508 of the Texas Rules of Evidence. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information you wish to withhold in the completed investigation is confidential under rule 508. Rule 508 provides, in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects. Thus, an informer's identity is confidential under rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in rule 508(c).

In this instance, you have not identified any information that relates to an informer, nor have you demonstrated that any individual whose phone number is listed in the submitted documents has furnished information to the city relating to or assisting in an investigation of a possible violation of a law. Therefore, the Rule 508 informer's privilege is inapplicable to the submitted information.

Section 552.117(2) of the Government Code excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.<sup>2</sup> You state that the phone numbers that you have marked are "home phone number[s] of a peace officer or a peace officer's family member." Section 552.117(2) does not make home phone numbers of peace officers' family members confidential. Therefore, you must withhold only the home phone numbers of peace officers that you have marked under section 552.117(2).

You also argue that the account number in the submitted documents is confidential under section 552.136. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must, therefore, withhold the account number in the submitted information under section 552.136.

To summarize, you must withhold the home phone numbers of peace officers that you have marked under section 552.117(2). You must withhold the account number under section 552.136. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

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<sup>2</sup> "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

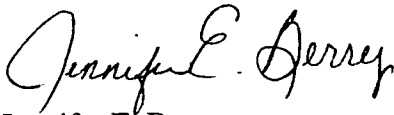
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 182174

Enc: Submitted documents

c: Mr. Deloyd Parker  
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(w/o enclosures)